



CITY OF NOVATO
CALIFORNIA

PLANNING COMMISSION

Meeting Minutes

Monday, October 10, 2022 – 7:00 pm

A. CALL TO ORDER AND ROLL CALL

Commission Present: Commissioners Crockett, Derby, Gerber, Havel, Heath, and Tiernan

Commission Absent: Commissioner Dawson

Staff Present: Assistant City Manager Jessica Deakyne, Community Development Director Vicki Parker, Public Works Director Chris Blunk, Sustainability Coordinator II Gretchen Schubeck, and Planning Manager Steve Marshall

B. APPROVAL OF FINAL AGENDA

COMMISSION ACTION: Upon motion by Commissioner Derby and seconded by Commissioner Gerber, the Planning Commission voted 6-0-0-1 via roll call to approve the final agenda.

AYES: Commissioners Crockett, Derby, Gerber, Havel, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion carried.

C. PUBLIC COMMENT

Steve Glanz – commented on 4G and 5G wireless telecommunications issues, including health and environmental concerns; noted fiber optic based telecommunications is the alternative. Referenced an upcoming effort to update Novato’s wireless telecommunications ordinance and requested discretionary review procedures be included in the ordinance. He noted sending a letter to the Planning Commission on the matter.

D. CONSENT ITEM

D.1. Approve Meeting Minutes of July 25, 2022 (BC, DD, JD, RG, CH, & PT)

D.2. Approve Meeting Minutes of September 12, 2022 (BC, DD, JD, RG, CH, LH, & PT)

COMMISSION ACTION: Upon motion by Commissioner Crockett and seconded by Commissioner Derby, the Planning Commission voted 6-0-0-1 via roll call to approve consent items D.1. and D.2.

AYES: Commissioners Crockett, Derby, Gerber, Havel, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion carried.

E. UNFINISHED AND OTHER BUSINESS

NONE

F. PUBLIC HEARING

F.1. Hold a Public Hearing to consider and possibly adopt a resolution: (1) recommending the City Council amend Novato Municipal Code Chapter XIX (Zoning) to prohibit the construction of new gas stations and the expansion of existing gas stations; and (2) finding the amendments exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3), 15307, and 15308

Assistant City Manager Deakyne presented the staff report.

Commissioner Gerber asked to clarify the limitations on the expansion of gas stations, referencing the addition of a carwash or remodel of a convenience store.

Assistant City Manager Deakyne stated the intention is to make gas stations legal non-conforming with respect to fossil fuels, but not to the extent where gas stations deteriorate.

Commissioner Gerber confirmed the ordinance would result in no net new fuel pumps, but other aspects can expand. He commented on the emergence of hydrogen technology and asked whether hydrogen or other new technologies would be allowed.

Director Parker noted the current draft ordinance does not attempt to define alternative energy sources. It is likely a follow-on issue recognizing the existing zoning ordinance does not address the matter.

Commissioner Gerber wondered if franchisees and small business owners want to expand, other than convenience stores and carwashes, shouldn't it be appropriate to add some flexibility to attract customers with greener vehicles, such as adding EV charging stations - can they add new EV charging stations.

Director Parker indicated EV charging could be considered to the extent allowed by State law. She noted the current zoning ordinance is silent on several aspects of alternative fuels.

Commissioner Gerber was concerned the draft regulations are silent on new sustainability technologies. This is an opportunity to be more entrepreneurial and allow business owners to expand in a sustainable way – is it possible to add some language to the proposed ordinance that bakes in that flexibility.

Director Parker indicated staff looked into the matter, but it was too complicated to address within the timeframe to complete the current strategic plan item. She stated the Commission can make its desire known to the City Council. However, this is likely a follow-on item since the language is not easily developed within current time frame.

Commissioner Gerber concluded his comments by indicating a desire to send a signal to the City Council to not just eliminate gas stations, but encourage other technologies.

Assistant City Manager Deakyne noted the Sustainability Commission recommended the City Council take the issue to the next level regarding alternative fuels, but it became complicated from a legal perspective.

Commissioner Derby asked, outside of the two applications [Hanna Ranch and Costco], how many applications for new gas stations have been received by the City in the past 5 to 10 years.

Planning Manager Marshall stated no new gas station applications have been received in the past several years; most applications have been related to remodeling existing gas stations.

Commissioner Derby asked if those types of requests [remodels] would still be allowed.

Planning Manager Marshall clarified the draft ordinance limits fossil fuel infrastructure, such as pumps and storage tanks, and prevents expansion of such features. From an aesthetics perspective, façade remodels could continue through the City's traditional review process; the addition of a convenience store or carwash could occur if allowed by zoning.

Commissioner Derby asked if a conditional use permit is currently required for new gas stations.

Planning Manager Marshall confirmed new gas stations require a use permit unless the involved parcel is zoned Planned District and is subject to a master plan allowing a gas station without any additional permit requirements.

Commissioner Derby commented that other than being the first [in Marin with a gas station prohibition] - why are we pursuing this action – what is the strategy.

Assistant City Manager Deakyne referenced regional actions and meeting General Plan and Strategic Plan goals, as well as taking a political stance.

Commissioner Derby asked if we have baseline studies on the carbon emissions situation in Novato or allocated what this ordinance will do to the situation.

Assistant City Manager Deakyne stated there is no data and this is an effort to move the community away from fossil fuel dependence in-line with state and regional actions.

Commissioner Derby asked if there is any poll on how many electric vehicles are in Novato.

Assistant City Manager Deakyne stated 4% of vehicles in Novato are zero emissions vehicles (ZEV).

Commissioner Heath commented that she also noticed the issue raised by Commissioner Gerber related to no acknowledgement of alternative fuels. She stated it makes sense to consider such fuels. She likes the idea of Novato taking a stand on the matter and being a leader whether or not it will make a big difference.

Assistant City Manager Deakyne observed there are 11 existing gas stations in Novato and asked Sustainability Coordinator II Schubeck to comment on the number of gas stations in other jurisdictions with bans on new gas stations.

Sustainability Coordinator II Schubeck noted the city of Windsor has 4 existing gas stations and Rohnert Park has 12; the number gas stations really depends on the community. She mentioned ZEV ownership is growing based on vehicle registrations.

Commissioner Havel asked staff to define “legal non-conforming use.”

Planning Manager Marshall explained that a legal nonconforming use is a land use legally established through the regulations/process in effect at the time the proposal came forward, but subsequent changes in law no longer permit the activity. A legal nonconforming use can continue to operate; there are typically limitations on expansion, moving, or relocating the nonconforming use – the intent is to freeze the use as originally permitted and it should not change unless conforming to current standards.

Commissioner Havel asked if you have a legal non-conforming use, when would you be required to meet current codes.

Planning Manager Marshall explained that specific to existing gas stations there would be no requirement to conform to current zoning standards as long as the business remains as found. If there is decision to change from a gas station use to a convenience store then at that point the gas station cannot be reestablished. If a gas station is destroyed beyond 50% of its assessed value then it cannot be reconstructed.

Commissioner Havel asked what if an underground storage tank does not meet current codes would this ordinance force replacement.

Planning Manager Marshall confirmed the ordinance would compel gas station owners to maintain their equipment consistent with state and federal law.

Commissioner Havel asked if current standards require such improvements.

Planning Manager Marshall explained the current zoning ordinance is not that matter of fact. The proposed ordinance attempts to provide more clarity regarding expectations and limitations on existing gas stations.

Commissioner Havel contrasted corporate gas stations versus independently owned gas stations from the perspective of the financial means to meet current codes. He asked about the nexus for the City to compel changes, noting potential harm to mom-and-pop gas stations.

Planning Manager Marshall stated both corporate and mom-and-pop gas stations are in the same situation with respect to needing to comply with federal and state standards as those standards change. The proposed ordinance indicates the City is open to modifications to existing gas stations that are intended to comply with federal and state standards. The compliance requirements will come from another regulatory agency and City will support the changes as not violating the nonconforming requirements of the gas station prohibition.

Commissioner Crockett asked how the City's vehicles are fueled – is gas purchased commercially or at local gas stations.

Director Blunk stated the majority of the City's fleet vehicles, including police vehicles, are gasoline powered. However, the City does have several hybrid police vehicles and is in the process of shifting other fleet vehicles to EVs. The City buys fuel in bulk with storage tanks at the police department and corp yard.

Commissioner Crockett asked if there was an analysis of what the projected population of Novato would be when the phase in of electric vehicles only occurs – what is the sense of projected demand.

Director Parker stated there is no analysis of future gasoline demand - Novato's population growth is lower - about 1.5% to 2% per year.

Commissioner Tiernan asked if the City Council passes the ordinance and a gas station wants to expand would they seek a variance.

Planning Manager Marshall stated an expansion could not occur if the ordinance is adopted - fuel storage would be limited to the capacity found at the time of the effective date of the ordinance. There is no process to overcome the limitation unless a gas station owner is willing to pursue a zoning ordinance amendment.

Commissioner Tiernan acknowledged the two pending gas station applications [Hanna Ranch and Costco].

Planning Manager Marshall explained the Hanna Ranch proposal included a Costco fuel center, but then Costco decided to pursue a gas station on its own property. The Hanna Ranch developer still wants to pursue permits for a fuel center. The Hanna Ranch and Costco applications remain active.

Commissioner Tiernan asked when the applications will expire if there is no action taken.

Planning Manager Marshall explained there is technically no expiration date on an application. An applicant would either need to voluntarily withdraw their application thereby ending further processing, or the matter would need to reach a decision to conclude the process, either denial or approval by the City. He stated agencies do not like to have applications inactive over long periods of time so there are instances where a city will bring a project forward for denial if the developer is not advancing the proposal. He noted legal issues surrounding Hanna Ranch – the application will remain pending until those issues are resolved and a decision is made to move forward.

The public comment period was opened.

Silke Valentine – Mentioned she is a member of 350 Marin and commented on bringing the climate emergency to an end by changing fossil fuel consumption. She supports adopting the proposed ordinance.

The public comment period was closed.

Commissioner Gerber referenced a study by the National Petroleum News – in the past 30-years the number of gas stations nationwide has gone from 215,000 to 145,000 versus the population growing from 249 million to 331 million - population growth does not necessarily reflect gas station growth.

Commissioner Derby drew a parallel with a recent hearing regarding a prohibition on check cashing services in Novato and noted being frustrated there was no discretionary process to consider the proposal. He is concerned about convoluting the zoning ordinance if it is not necessary. He does not support the ordinance based on losing discretion where there is existing flexibility.

Commissioner Crockett recognized the political aspect of the proposal, but was concerned about unintended consequences. He observed at least one gas station that is so busy it is routinely backed-up – so there is some level of demand. There will be real consequence regardless of EV prices - this will impact low income persons and businesses disproportionately. The market will dictate availability and location of gas stations – the City needs to consider how they fuel their fleet and set the best possible example, but will be impacted as well. He supports letting the pending gas station applications move forward as suggested by staff.

Commissioner Havel observed the process is moving fast – we don't have time to waste on this issue. He understands why the ordinance is focused on one issue and noted there are policies encouraging alternative fuels. He encouraged Matt & Jeff's ownership to speak-up on the issue and hopefully support the effort. He expressed concern about the City reversing direction on the Costco project – there is some case law in Marin about denying a project based on new standards.

Commissioner Heath commented that anytime a new resolution or decision is made there will be unintended consequences. Climate change is moving fast and it is time to move forward and take a small risk.

Commissioner Tiernan supports the resolution; the Sustainability Commission looked at it appropriately. He stated there is sufficient capacity to meet local demand for fuel.

COMMISSION ACTION: Upon motion by Commissioner Havel and seconded by Commissioner Heath, the Planning Commission voted 4-2-0-1 via roll call to adopt the draft resolution as presented by staff.

AYES: Commissioners Gerber, Havel, Heath, and Tiernan

NOES: Commissioners Crockett and Derby

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion carried

G. GENERAL BUSINESS

G.1. Provide a report to the City Council regarding whether the potential acquisition of property located at 501 Davidson St., Novato, CA 94945 (APNs 153-250-06, -07, -09, and -11) is consistent with Novato General Plan 2035

Director Blunk presented the staff report.

Commissioner Gerber referenced his experience working on a corp yard project in Walnut Creek, noting many benefits and revenue opportunities through ground leases.

Chair Tiernan inquired about due diligence concerning hazards and liabilities.

Director Blunk stated historic property records have been reviewed. There was a leaking gas tank at the site that was remediated in the 1990s.

The public comment period was opened.

There was no public comment.

The public comment period was closed.

COMMISSION ACTION: Upon motion by Commissioner Derby and seconded by Commissioner Gerber, the Planning Commission voted 6-0-0-1 via roll call to adopt the draft resolution as presented by staff.

AYES: Commissioners Crockett, Derby, Gerber, Havel, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion carried.

G.2. Provide a report to the City Council regarding whether the grant of easement to Pacific Gas and Electric (PG&E) for the purpose of installing, operating, and maintaining underground gas infrastructure on city-owned property is consistent with the Novato General Plan

Director Blunk presented the staff report.

Commissioner Gerber asked if an appraisal had been conducted.

Director Blunk stated an appraisal has yet to be conducted – additional review will occur to determine if an appraisal is warranted.

Commissioner Tiernan inquired about providing notice to the neighbors regarding PG&E's improvements within the easement.

Director Blunk stated he did not know PG&E's schedule; staff will work with PG&E regarding notice to the neighbors.

The public comment period was opened.

There was no public comment.

The public comment period was closed.

COMMISSION ACTION: Upon motion by Commissioner Crockett and seconded by Commissioner Derby, the Planning Commission voted 6-0-0-1 via roll call to adopt the draft resolution as presented by staff.

AYES: Commissioners Crockett, Derby, Gerber, Havel, Heath, and Tiernan

NOES: None

ABSTAIN: None

ABSENT: Commissioner Dawson

Motion carried.

H. COMMITTEE AND LIAISON REPORTS

I. ADJOURNMENT

The Planning Commission adjourned the meeting at 8:17 PM.

I HEREBY CERTIFY that the foregoing minutes were duly adopted at the Planning Commission meeting of November 28, 2022.

/Steve Marshall/

Steve Marshall, Planning Manager